

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-shl; Adv. Proc. No. 20-06307-shl

4 - - - - -x

5 In the Matters of:

6 SEARS HOLDINGS CORPORATION, et al.,

7 Debtors.

8 - - - - -x

9 KMART HOLDING CORPORATION, et al.,

10 Plaintiffs,

11 v.

12 BEST-LOCK (ASIA) LTD.,

13 Defendant.

14 - - - - -x

15 United States Bankruptcy Court

16 300 Quarropas Street, Room 248

17 White Plains, New York 10601

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21 March 29, 2023

22 11:04 AM

23 B E F O R E:

24 HON. SEAN H. LANE

25 U.S. BANKRUPTCY JUDGE

1 18-23538-shl Sears Holdings Corporation, et al.

2 Ch 11

3

4

5 Omnibus Hearing

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7 Adversary proceeding: 20-06307-shl Kmart Holding Corporation  
8 et al v. Best-Lock (Asia) Ltd.

9 Status Conference Re: Doc. #5 Motion To Dismiss Adversary  
10 Proceeding Filed By Best-Lock (Asia) Ltd.

11

12 Adversary proceeding: 20-06307-shl Kmart Holding Corporation  
13 et al v. Best-Lock (Asia) Ltd.

14 Status Conference Re: Doc. #7 Response To Motion To Dismiss  
15 Filed On Behalf of Kmart Holding Corporation

16

17 Adversary proceeding: 20-06307-shl Kmart Holding Corporation  
18 et al v. Best-Lock (Asia) Ltd.

19 Status Conference Re: Doc. #9 Letter to the Court Requesting  
20 Status Conference Filed on Behalf of M3 Advisory Partners,  
21 LP

22

23 Doc. #10800 Order Scheduling Status Conference Re: Beau

24 LeBaron\*\*\*THIS MATTER WILL BE RESCHEDULED\*\*\*

25

1 BENCH RULING Re: Doc. #10661 Motion of the Chubb Companies  
2 for Entry of an Order (I) Ruling that Default Judgment,  
3 Settlement Agreements and State Court Orders are Void Ab  
4 Initio Pursuant to 11 U.S.C. 105(a) and 362(a) and Without  
5 Effect; and (II) Granting Related Relief

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25 Transcribed by: Lisa Beck

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1 P R O C E E D I N G S

2 THE COURT: All right. So with that, the next  
3 matter that's up is Sears Holding Corporation Chapter 11  
4 case on for a variety of matters as are reflected in the  
5 agenda that was filed on the docket. And so, let me find  
6 out who's here for the liquidating trustee.

7 MR. REDING: Richard J. Reding appearing on behalf  
8 of the liquidating trustee in the Best Lock matter, Your  
9 Honor.

10 THE COURT: All right. Good to have you here.  
11 And so let me find out who the other appearances are from  
12 parties this morning.

13 MS. HEITZENRATER: Good afternoon, Your Honor.  
14 Kate Heitzenrater for The Chubb Companies.

15 THE COURT: All right. Good morning to you. Any  
16 other appearances?

17 MR. YOUNGBLUT: Good morning, Your Honor.

18 MR. FAIL: Good morning --

19 MR. YOUNGBLUT: Oh. I apologize.

20 MR. FAIL: Please, please, please.

21 MR. YOUNGBLUT: This is Dan Youngblut from Foster  
22 Garvey on behalf of Shelley Hawkins here for the bench  
23 ruling, Your Honor.

24 THE COURT: All right. Good morning to you as  
25 well. And Mr. Fail?

1 MR. FAIL: Good morning, Your Honor. Garrett  
2 Fail, Weil Gotshal & Manges, for the liquidating trustee.

3 THE COURT: All right. Good morning. Any other  
4 appearances?

5 All right. So I do have the agenda. I know  
6 there's been a tweak to the agenda which has been conveyed  
7 to chambers. Again, I always want to thank folks for giving  
8 us a heads up as to what's happening and what's not  
9 happening in terms of just what's on the agenda.

10 So with -- I'll start off by turning it over to  
11 the liquidating trustee.

12 MR. FAIL: Thank you very much, Your Honor. We  
13 can proceed with the order that is on the agenda if it  
14 pleases the Court. There's no general update. The case is  
15 proceeding along the lines that we expected it would. There  
16 was a recent ruling from the Supreme Court denying a cert  
17 petition in one matter that was on appeal which will allow  
18 distributions to flow out to the PBGC in an initial  
19 distribution in the coming weeks. But other than that, we  
20 intend to prepare and file an update with the Court on a  
21 semi-annual basis. And I believe that will be in the next  
22 month or so.

23 THE COURT: All right. Thank you very much. So I  
24 think we can just go right down the agenda then.

25 MR. FAIL: Yes, sir. So the first item is an

1 adversary proceeding going forward as a status conference.

2 My firm's not handling that matter.

3 THE COURT: Oh. Well, let me just back up -- I'm  
4 going to back up just to the contested matter that's no  
5 longer on for today.

6 MR. FAIL: Not -- okay.

7 THE COURT: Yeah, just to try to make some sort of  
8 record as best we can.

9 So this was put on the calendar based on numerous  
10 requests that Mr. Beau LeBaron had submitted to the Court.  
11 And then I think at a certain point, the Court issued an  
12 order to try to tee up his issues which I think, as that  
13 order noted, had been the subject of a hearing and were  
14 still out there. And we just thought that in the interest  
15 of clarity, it'd be good to have something and figure out  
16 where we are.

17 And then I understand from Ms. Ebanks, my  
18 courtroom deputy, that it was explained that Mr. LeBaron had  
19 a scheduling conflict. He's appearing in some other court  
20 somewhere in California and asked to adjourn this even  
21 though I think it was sort of set for his benefit. But be  
22 that as it may, I understand it's off. I did not see Mr.  
23 LeBaron here. I just want to make it clear sometimes these  
24 things don't go as planned. But he's not here as it turns  
25 out.



1 And so, Mr. Fail, am I right in saying that that's  
2 going to be adjourned to April 19th?

3 MR. FAIL: It was going to be adjourned. I don't  
4 believe April 19th was set. It was indeed to be determined.  
5 That day doesn't --

6 THE COURT: Okay. That --

7 MR. FAIL: -- work for me but we can --

8 THE COURT: That's fine. So what I would say is  
9 if I could ask you the favor of taking the laboring oar and  
10 finding out what date would work and then communicating that  
11 to chambers. Whatever's fine with you all is fine with me.  
12 The idea, though, again, just in these circumstances, it's  
13 always good to be as clear as possible. So I would think  
14 that at a certain point, once it's agreed that there be a  
15 notice sent -- put on the docket and then sent to Mr.  
16 LeBaron so it's very clear.

17 And -- but any date you want to pick is fine. My  
18 thought would be maybe sometime in the next couple of  
19 months, whatever works. But just again, talk to Ms. Ebanks  
20 and we'll get that done. But thank you very much again for  
21 the heads up as to what the status was going into this  
22 morning. It's much appreciated.

23 And so, with that, I'll turn it back to you to  
24 address the adversary proceeding.

25 MR. FAIL: I'm not sure who's handling that matter

1 for the liquidating trust thereon.

2 MR. REDING: Yes. Yes, Your Honor. I'll be  
3 handling the Best Lock adversary proceeding, Your Honor.

4 THE COURT: All right. Thank you. So I did see  
5 that's number 2 on the -- well, it's II. And number 2  
6 otherwise on the agenda. I don't -- I understand that  
7 there's no one here for Best Lock (Asia) Ltd. who is the  
8 defendant in that adversary but I just want to confirm that.  
9 Anyone here for Best Lock (Asia)?

10 No. All right. And I think there was a request  
11 for a status conference to discuss the very reasonable issue  
12 of exactly what the best way to proceed is here. And so,  
13 I'll turn it over to you, counsel, in the first instance and  
14 then we can chat about it.

15 MR. REDING: Yes, Your Honor. We -- there's a pro  
16 se motion -- well, described as a motion to dismiss. It was  
17 sort of a letter motion that was filed, looks like in late  
18 July of 2021. We filed a response to that. It's basically  
19 been sitting out there. So I think probably the best way to  
20 go forward is how ever the Court would like to dispose of  
21 that. And then we can proceed from there. Assume probably  
22 give them time to interpose an answer. And then if they  
23 don't, proceed to a default judgment.

24 THE COURT: All right. And that motion to dismiss  
25 was filed by the corporation pro se. Correct?

1 MR. REDING: Yes. That is correct, Your Honor.

2 THE COURT: All right. And so I -- let me just  
3 also for purposes of today -- the request for a status  
4 conference -- what I'm trying to get at is just to make a  
5 record as to anything that's been sent to this particular  
6 defendant to make it clear that they can't proceed pro se  
7 and that today is on for a hearing. I'm looking at the  
8 agenda and I'm just -- was there service of the notice of  
9 the status conference today?

10 MR. REDING: I believe so, Your Honor. We've  
11 tried to reach out to them and we have not heard a response  
12 in quite some time. I believe we've tried emailing them as  
13 well and we've received notices that those emails have  
14 bounced back.

15 THE COURT: All right. All right. So, yeah, I  
16 have the notice of status conference that was filed by ASK  
17 at docket number 10 in the adversary proceeding. My binder  
18 doesn't have like a certificate of service of that. So what  
19 I thought might be the best -- I'm always worried about  
20 taking one step forward only to take two steps back because  
21 you have some issue about notice. So maybe the thing to do  
22 is to schedule this -- if you want to submit an order to  
23 show cause that the motion to dismiss will be denied and the  
24 case will essentially be that the plaintiff will move  
25 forward with a default.

1           If there's no appearance made by counsel and that  
2       include the notion that counsel -- I'm sorry -- that a  
3       corporate entity can't proceed pro se in court and then also  
4       provide in that order to show cause that this order to show  
5       cause will be served on Best Lock. And you can include an  
6       email address, the best email address you have and also just  
7       a regular address. And if you want to do it by overnight  
8       mail or however you want to do it. And then that way, I  
9       think we have it teed up procedurally to clear away the  
10      motion to dismiss if no one shows up and to allow you to go  
11      ahead with your default, again, if no one shows up. I'm  
12      certainly -- I'm sure you'll draft a much more beautiful  
13      document than what I've just described. And so, if you  
14      think there are other bells and whistles that would be  
15      appropriate to put in such a draft order to show cause,  
16      please use your considerable professional judgment. But  
17      that would be my thought just to sort of clear away things  
18      and set aside enough proper path. That's one way to do it.  
19      I'm open to any other suggestions you might have if there's  
20      a better way to do it.

21           Any thoughts, counsel?

22           MR. REDING: Not really, Your Honor. I think  
23      proceeding with an order to show cause makes sense to me.  
24      You know, make sure that they've got proper notice of that.  
25      That all makes sense to me as well. And just try to head

1 off any issues that might come up down the road as best as  
2 we can.

3 THE COURT: Yeah. I think you put it very well is  
4 to just make sure that it's teed up and we don't have sort  
5 of an albatross procedurally hanging around the case as you  
6 move forward. So that would be great.

7 And again, I would say pick a date so that there's  
8 sufficient time. And just one of the dates you already have  
9 scheduled. And if you draft the order, submit it and then  
10 I'll sign it and then, again, it will provide that U.S.  
11 counsel for the liquidating trustee will handle service.  
12 And then I think we should be in a good spot.

13 All right. Thank you very much for that.  
14 Anything else on that particular matter?

15 MR. REDING: Not on this end, Your Honor.

16 THE COURT: All right. So I know there's a bench  
17 ruling that I need to get to. Is there anything else that  
18 we need to address in this case before we get to the bench  
19 ruling?

20 MR. FAIL: No, Your Honor. Not that I'm aware of.  
21 Thank you.

22 THE COURT: All right. Thank you very much.  
23 Again, thank you to counsel for the liquidating trustee to  
24 keep us on the straight and narrow path here. Much  
25 appreciated.

1 And with that, I know that folks are waiting for a  
2 bench ruling. And so I'll segue to that. I understand that  
3 both parties are here for the bench ruling.

4 So with that, I will proceed.

5 Before the Court is the motion of ACE American  
6 Insurance Company and its U.S. affiliates, which are  
7 collectively referred to as Chubb, for entry of an order  
8 ruling that certain judgments, agreements and orders entered  
9 in a state court litigation are void ab initio under Section  
10 362 of the Bankruptcy Code. See motion of the Chubb  
11 entities for entry of an order (I) ruling that default  
12 judgment, settlement agreements and state court orders are  
13 void ab initio pursuant to 11 U.S.C. Section 105(a) and  
14 362(a) and without effect; and (II) granting related relief.  
15 That's all at ECF number 10661. And I'll refer to that as  
16 "the Motion". For the reasons to be discussed, the Court  
17 finds that certain of these events are certainly void for  
18 violating the automatic stay but others are not.  
19 Accordingly, the Motion is granted in part and denied in  
20 part.

21 So let me give a little bit of a background.

22 The parties' briefs set forth extensive facts in  
23 this matter. And it's my assessment that really none of  
24 these are disputed. Familiarity with the facts set forth in  
25 these briefs is assumed but nonetheless, I'll provide a

1 brief review of the main facts that are central to  
2 understand Chubbs' motion.

3 So on October 15th, 2018, Sears Holding  
4 Corporation and certain of its affiliates filed for relief  
5 under Chapter 11 of the Bankruptcy Code. And that is  
6 obviously referred to as the petition date.

7 On January 9th, 2019, this Court also entered an  
8 order extending the automatic stay to certain nondebtor  
9 parties. See ECF 1528. And this stay extension order  
10 extended the automatic stay under Section 362(a) of the  
11 Bankruptcy Code to certain employees of the debtors and as  
12 to certain actions and claims against them.

13 Prior to the debtors' bankruptcy filing, Chubb had  
14 issued insurance policies to one or more of the debtors.  
15 These included policy number H09044188, the so-called AL  
16 policy, which was issued by ACE American to Sears as first  
17 named insured. Under the AL policy, ACE American provided  
18 automobile liability insurance to certain of the debtors and  
19 other insureds for the period of August 1st, 2016 to August  
20 1st, 2017.

21 On August 20th of 2020, the Court entered an order  
22 authorizing the assumption of the insurance programs (see  
23 ECF number 8396) which approved the debtors' assumption and  
24 assignment of its insurance programs to Transform Holdco LLC  
25 with certain retained insurance contracts remaining with the

1 debtors. The AL policy is a retained insurance contract and  
2 therefore technically remains property of the debtors'  
3 estate.

4 On September 20th of 2018, less than a month  
5 before the bankruptcy cases were filed, Shelley Hawkins  
6 commenced a lawsuit, as Plaintiff, under case number 18-2-  
7 08408-31, the Washington lawsuit, against Debtor Sears  
8 Holding Management Corporation and Debtor A&E Factory  
9 Service, LLC, which I'll refer to as the debtor defendants.  
10 That lawsuit was also against nondebtor Edwin G. Miguel and  
11 two other nondebtor defendants in the Superior Court in the  
12 state of Washington for Snohomish County, which I'll refer  
13 to as the Washington state court. And this is all reflected  
14 in the complaint which is attached as Exhibit E to the  
15 motion.

16 The Washington lawsuit alleges that Plaintiff's  
17 vehicle was rearended by a third party and that Edwin  
18 Miguel, a Sears employee, then rearended that third party  
19 causing a second collision with Plaintiff's vehicle. (See  
20 the Complaint at paragraphs 12 through 18.)

21 On the petition date, the automatic stay went into  
22 effect under Section 362 of the Bankruptcy Code. And what  
23 that means is that there was -- it stayed all claims against  
24 the debtors including the debtor defendants in the  
25 Washington lawsuit.



1           The stay extension order was then entered on  
2           January 9th of 2019 which extended the automatic stay to  
3           nondebtor defendant Mr. Miguel in the Washington lawsuit.  
4           On January 24th, 2019, Chubb's counsel in the Washington  
5           lawsuit sent a notice to Plaintiff's counsel informing the  
6           plaintiff the Court had signed an order extending the  
7           automatic stay to Sears Holding Corporation and its debtor  
8           affiliates and attaching a copy of the stay extension order.  
9           (See Exhibit F to the motion.)

10           Chubb's notice did not reference Mr. Miguel  
11           specifically and exhibit to the stay extension order clearly  
12           references Mr. Miguel as one of the nondebtor parties to  
13           which the stay was extended. And again, see that notice of  
14           extending the stay order attached as Exhibit F to the  
15           motion.

16           Despite this, the plaintiff continued to pursue  
17           the Washington lawsuit against both Debtor A&E Factory  
18           Service and Mr. Miguel. On April 25th, 2019, the plaintiff  
19           moved the Washington state court for an order of default  
20           against both A&E Factor Service and Mr. Miguel, each of whom  
21           was protected by the automatic stay and/or the stay  
22           extension order at the time.

23           The plaintiff also sought a default against the  
24           third party who had caused the collision but that wasn't  
25           relevant for -- is not relevant for our decision here today.

1 On May 2nd, 2019, the Washington state court  
2 granted Plaintiff's motion and entered a default judgment in  
3 favor of the Plaintiff against A&E Factory Service and Mr.  
4 Miguel in the amount of \$399,297.32 plus a certain amount in  
5 statutory costs.

6 On August 26th, 2020, Plaintiff's counsel then  
7 sent a demand letter to Mr. Miguel stating -- Mr. Miguel was  
8 now a judgment debtor and owed Plaintiff that -- some  
9 \$440,827.61 plus interest due to the default judgment. The  
10 demand letter included a subpoena and claimed that Mr.  
11 Miguel was required to appear at the office of Plaintiff's  
12 counsel and bring his financial paperwork related to bank  
13 accounts, wages, all property owned and so forth. See  
14 Demand Letter at 1 which is attached as Exhibit I to the  
15 motion.

16 The demand letter also stated that Plaintiff's  
17 counsel could free Mr. Miguel of this judgment subpoena but  
18 that this offer in freeing Mr. Miguel in paying his judgment  
19 is withdrawn if Mr. Miguel contacts his insurance company."  
20 See id. at 1-2.

21 Chubb asserts that Plaintiff's counsel also  
22 provided recommendations to Mr. Miguel as to counsel that  
23 Mr. Miguel could personally retain and that Mr. Miguel  
24 ultimately retained one of those lawyers. See Response to  
25 Interrogatories at 10 attached as Exhibit J of the motion.

1 On October 7th, 2020, more than 15 months after  
2 the default judgment was entered, Plaintiff filed a motion  
3 with the Washington state court to vacate the default  
4 judgment against A&E Factory Service. Plaintiff did not,  
5 however, move to vacate the default judgment against Mr.  
6 Miguel at that time.

7 On October 9th, 2020, Mr. Miguel and the plaintiff  
8 executed a settlement agreement. And we're going to call  
9 this the first settlement agreement which provided Mr.  
10 Miguel recognizes and acknowledges -- that's the term in the  
11 settlement agreement -- that the default judgment has been  
12 entered against him, that the amount of the default judgment  
13 with ongoing interest was approximately \$443,323 and that  
14 the entry of the default judgment leaves Mr. Miguel's  
15 personal assets exposed and at risk to execution and  
16 collection by Plaintiff. See First Settlement Agreement at  
17 6 attached as Exhibit L to the motion.

18 Mr. Miguel agreed, among other things, to assign  
19 certain claims against ACE American to Plaintiff in exchange  
20 for Plaintiff's agreement not to execute the default  
21 judgment against Mr. Miguel. See *id.* at 7 through 8. The  
22 first settlement agreement makes no mention of the debtors'  
23 bankruptcy cases, the automatic stay or the stay extension  
24 order.

25 On March 25th, 2021, Plaintiff and the debtors

1 entered into a proposed stipulation agreement and order  
2 granting limited relief from the automatic stay at ECF  
3 number 9372. This stay relief stipulation acknowledges,  
4 among other things, that the stay extension order was  
5 entered and extended the automatic stay to the Washington  
6 lawsuit and that the Washington lawsuit remains pending but  
7 stayed in the Washington state court. See stay relief  
8 stipulation, paragraph C and E.

9 It further states that Plaintiff desires to resume  
10 the Washington lawsuit solely against the nondebtor  
11 defendants including Mr. Miguel. See *id.* paragraph E. The  
12 stay relief stipulation further provides the automatic stay  
13 and the stay extension order shall be modified to permit  
14 Plaintiff to continue the Washington lawsuit solely against  
15 the nondebtor defendants including Mr. Miguel and any  
16 insureds thereof.

17 On April 5th, 2021, the Court entered an order  
18 approving the stay relief stipulation. See ECF number 9392.

19 On March 27th, 2021, two days after the stay  
20 relief stipulation was entered into, Plaintiff's counsel  
21 sent Mr. Miguel's counsel a second draft settlement  
22 agreement. This second settlement agreement did not seek a  
23 judgment of some \$443,000 as was included in the first  
24 settlement agreement but instead provided, among other  
25 things, that the defendant Miguel recognizes and

1 acknowledges that judgment is being sought against him in  
2 this action in an amount exceeding \$1.5 million and the  
3 parties agree that the reasonable value of the past and  
4 future damages sustained by and justly due to Plaintiff is  
5 \$1.5 million. And it's hereby stipulated to entry of  
6 judgment against Defendant Miguel in Plaintiff's favor for  
7 that principal amount. See second settlement agreement at  
8 pages 7 through 9 attached as Exhibit N to the motion.

9 The second settlement agreement again included an  
10 agreement from Mr. Miguel to assign certain claims against  
11 ACE American to Plaintiff in exchange for Plaintiff's  
12 agreement not to execute the confession of judgment against  
13 Mr. Miguel which had now been increased to 1.5 million. See  
14 id.

15 On June 23rd, 2021, Mr. Miguel signed the second  
16 settlement agreement. On June 30th, 2021, Plaintiff filed a  
17 motion with the Washington state court seeking an order  
18 vacating the default judgment against Mr. Miguel which  
19 motion was granted on the same day.

20 Then on July 12th, 2021, Plaintiff filed a motion  
21 in the Washington state court for a determination of  
22 reasonableness with respect to the second settlement  
23 agreement and for judgment thereon.

24 On July 15th, 2021, Plaintiff filed a motion in  
25 the Washington state court for voluntary dismissal of the

1 debtor defendants in the Washington lawsuit but not for  
2 dismissal of Mr. Miguel. Then on July 21st, 2021, the  
3 Washington state court entered an order determining \$1.5 to  
4 be a reasonable settlement between Plaintiff and Mr. Miguel  
5 and providing that the Washington state court will  
6 separately enter final judgment against Mr. Miguel in the  
7 amount of \$1.5 million plus interest.

8 On September 2nd, 2021, the Washington state court  
9 entered a further order, which I'll refer to as the  
10 confession of judgment, approving Mr. Miguel's confession of  
11 judgment entering judgment against him and in favor of  
12 Plaintiff in the amount of \$1.5 million plus interest.

13 Plaintiff subsequently filed an amended complaint  
14 in the Washington lawsuit asserting Mr. Miguel's  
15 purportedly-assigned contract and bad faith claims against  
16 ACE American and naming ACE American as a defendant in the  
17 Washington lawsuit for the first time.

18 So turning to the legal standard, the automatic  
19 stay is made operable by Section 362 of the Bankruptcy Code  
20 and is one of the debtor's key protections in bankruptcy.  
21 See, e.g., *Midlantic National Bank v. New Jersey Dept. of*  
22 *Environmental Protection*, 474 U.S. 494 at 503, a case from  
23 1986. It is meant to provide "complete, immediate, albeit  
24 temporary relief to the debtor from creditors, and also to  
25 prevent dissipation of the debtor's assets before orderly

1 distribution to creditors can be effected." S.E.C. v.  
2 Brennan, 230 F.3d 65 at 70 (2nd Cir. 2000) which is quoting  
3 Penn Terra Ltd. v. Department of Env'tl. Resources, 733 F.2d  
4 267 at 271 (3d Cir. 1984).

5 By its very terms, no action by a Court is  
6 necessary for the stay to take effect. See In re Colonial  
7 Realty Company, 980 F.2d 125 at 137 (2nd Cir. 1992).

8 Importantly, the automatic stay allows the  
9 bankruptcy court to centralize all disputes concerning  
10 property of the debtor's estate so that organization could  
11 proceed efficiently unimpeded by uncoordinated proceedings  
12 in other arenas. See Brennan, 230 F.3d at 70 which is  
13 quoting In re State Lines Inc., 197 F.3d 631 at 640 (2nd  
14 Cir. 1999).

15 So central is the stay under Section 362 to an  
16 orderly bankruptcy process that actions taken in violation  
17 of the stay are void and without effect. See In re Colonial  
18 Realty, 980 F.2d at 137. See also Rexnord Holdings, Inc. v.  
19 Bidermann, 21 F.3d 522 at 527 (2nd Cir. 1994), In re  
20 Signature Apparel Grp., 577 B.R. 54 at 88 (Bankr. S.D.N.Y.  
21 2017).

22 As one of the fundamental debtor protections  
23 provided for under the Bankruptcy Code, Courts rigorously  
24 enforce the automatic stay and discourage stay violations.  
25 See Eastern Refractories Co. v. Forty Eight Insulations

1 Inc., 157 F.3d 169 at 172 (2nd Cir. 1998) citing H.R.Rep.  
2 No. 95-595, at 340 from 1977. See also In re Soares, 107  
3 F.3d 969 at 975 through 76 (1st Cir. 1997).

4 So applying these principles here, the Court has  
5 jurisdiction to hear and determine all matters arising from  
6 and relating to implementation and enforcement of the  
7 automatic stay and the stay extension order. See State  
8 Extension Order at paragraph 8. See also In re  
9 Johns-Manville Corporation, 517 F.3d 52 at 60 (2nd Cir.  
10 2008) which notes "It is undisputed that the bankruptcy  
11 court had continuing jurisdiction to interpret and enforce  
12 its own...orders." See also In re Motors Liquidation  
13 Company, 514 B.R. 377 at 381 (Bankr. S.D.N.Y. 2014) noting  
14 that bankruptcy courts have subject matter jurisdiction to  
15 enforce the orders in bankruptcy cases and proceedings under  
16 the Court's arising under a jurisdiction.

17 Indeed, any relief for violation of the automatic  
18 stay must be sought in bankruptcy court under Section 334 --  
19 I'm sorry -- under 28 U.S.C., Section 1334(a) and is not to  
20 be sought in the state court where the alleged violation  
21 might have occurred. See Eastern Equipment & Services Corp.  
22 v. Factory Point Nat'l Bank in Bennington, 236 F.3d at 117,  
23 121 (2d Cir. 2001). See also Truong v. Litman, 312 F. App'x  
24 377, 378 (2nd Cir. 2009); see Couloute v. Hunt, Leibert,  
25 Chester & Jacobson, LLC, at 295 B.R. 689 at 692 (D. Conn.



1 2003).

2 An order terminating the automatic stay operates  
3 only prospectively. Thus, the termination of the automatic  
4 stay does not reinstate or validate a stay violation but  
5 rather merely permits a creditor to initiate or reinitiate  
6 an action as of that time. See *In re Heating Oil Partners*,  
7 2009 WL 5110838 at \*10 (D. Conn. Dec. 17, 2009) which is  
8 quoting the *In re WorldCom* case, 325 B.R. 511 at 519 (Bankr.  
9 S.D.N.Y. 2005).

10 So applying these standards here, the efforts by  
11 the plaintiff and her counsel to pursue the Washington  
12 lawsuit and obtain and enforce any judgment against the  
13 debtors after the petition date or to pursue, obtain any  
14 judgment against Mr. Miguel after the Court entered the stay  
15 extension order on January 8th, 2019 were clearly violations  
16 of the automatic stay to the extent they occurred before  
17 this Court modified the automatic stay in the stay relief  
18 stipulation on April 5th, 2021.

19 Accordingly, the motion by the plaintiff in the  
20 Washington state court seeking default was in clear  
21 violation of the automatic stay and the stay extension  
22 order. And the resulting default judgment entered by the  
23 Washington state court against A&E Factory Services and Mr.  
24 Miguel in May of 2019 is therefore void and without effect.

25 In the same vain, the plaintiff's subsequent

1 efforts to invoke the default judgment against Mr. Miguel so  
2 as to urge him into resolving Plaintiff's claims including  
3 sending the demand letters were also violations. See Conner  
4 v. Howe, 344 F. Supp. 2d 1164 and 1172 (S.D. Ind. 2004)  
5 which notes that Section 362(a) acts to stay any attempt to  
6 enforce a judgment regardless of when it was obtained.

7 Last but not least, the execution of the first  
8 settlement agreement in October of 2020 was in violation of  
9 the automatic stay as it further attempted collection on the  
10 plaintiff's claim. The stay relief order did not annul or  
11 otherwise retroactively lift the automatic stay or did the  
12 stay relief order even mention let alone purport to validate  
13 or ratify the default judgment. Indeed, it is conspicuously  
14 silent as to the default judgment with the first settlement  
15 agreement, which the Court finds to be an alarming lack of  
16 candor to the Court. And indeed, I think counsel flew  
17 exceedingly close to the sun in many respects in connection  
18 with the actions taken before there was actually relief from  
19 the stay and the stay order which the Court finds to be  
20 exceedingly troubling.

21 So Chubb argues that the relief granted in the  
22 Washington lawsuit subsequent to the entry of the stay  
23 relief order is also void. Specifically, the second  
24 settlement agreement, the settlement order and the  
25 confession of judgment. But the stay relief stipulations

1 specifically lifted the automatic stay against certain  
2 nondebtor parties while leaving the stay in place with  
3 respect to the debtors (see the stay relief stipulation in  
4 paragraph 2) and explicitly permitted the Washington lawsuit  
5 to proceed against the nondebtor defendants and any insureds  
6 thereof (see stay relief order, paragraph 2). The term  
7 "nondebtor defendant" was defined to include, among others,  
8 Mr. Miguel. See stay relief stipulation at Section A.  
9 Entry of the stay relief order therefore left the plaintiff  
10 free to pursue litigation against Mr. Miguel.

11 Additionally, the stay relief order further  
12 clarified that any insurer from which coverage is sought can  
13 administer, handle, defend, settle and/or pay such claims in  
14 the ordinary course of business without further order of  
15 this bankruptcy court. See stay relief order at paragraph  
16 6.

17 Stay relief order was noticed for presentment  
18 before the Court and a copy of the pleading was served on  
19 counsel to Chubb among others. See notice of presentment of  
20 stipulation agreement order granting limited relief from the  
21 automatic stay, ECF number 9372. See also affidavit of  
22 service, ECF number 9383. No party objected to the stay  
23 relief stipulation which was granted on April 5th, 2021 at  
24 which point the stay relief stipulation became effective and  
25 the stay was lifted with respect to Mr. Miguel and the

1 Washington lawsuit. See stay relief stipulation, paragraph  
2 1.

3 The Washington state court's entry of the default  
4 judgment and Mr. Miguel's entry into the first settlement  
5 agreement occurred prior to the entry of the stay relief  
6 order and those documents are clearly void and actions are  
7 clearly void because they were entered in violation of the  
8 automatic stay. But the second settlement agreement was not  
9 entered into by Mr. Miguel until June 23rd, more than two  
10 months after the stay relief order was granted. Likewise,  
11 the settlement order and the confession of judgment were  
12 entered by the Washington state court subsequent to the stay  
13 relief order.

14 In addition, the second settlement agreement, the  
15 settlement order and the confession of judgment do not  
16 directly impact the assets of the debtors or the debtors'  
17 estates. Indeed, the debtors have not taken any position on  
18 the motion or as the liquidating trustee meaning that the  
19 two parties against whom the stay violations previously took  
20 place, the debtors and Mr. Miguel, are not seeking any  
21 relief from the Court based on the facts here. Accordingly,  
22 the Court finds the stay is not implicated with respect to  
23 those documents.

24 So Chubb notes that while the second settlement  
25 agreement was executed after entry of the stay relief order,

1 Chubb relies on the fact that it was prepared and presented  
2 to Mr. Miguel before the stay relief order was granted.  
3 Thus, Chubb argues the second settlement agreement is, in  
4 essence, a pre-stay relief settlement. Chubb also argues  
5 that the second settlement agreement was a result of  
6 harassing and forced conduct while the automatic stay and  
7 the stay extension order were still in effect.

8 But even if the terms of the second settlement  
9 agreement were drafted prior to the entry of the stay relief  
10 order, the fact is that Mr. Miguel did not bind himself to  
11 it until after the stay had been lifted against him.  
12 Importantly, Mr. Miguel was represented by counsel at the  
13 time the settlement agreement was negotiated and  
14 consummated.

15 Chubb next argues that the default judgment was  
16 leveraged by Plaintiff's counsel to force Mr. Miguel to  
17 enter into the second settlement agreement and notes that  
18 Mr. Miguel's counsel was recommended to him by the plaintiff  
19 apparently suggesting Mr. Miguel did not receive adequate  
20 representation. But the actual evidence on this issue is to  
21 the contrary. Sean McDowell (sic), Esquire submitted an  
22 affidavit stating that he was retained by Mr. Miguel in  
23 September 2020 in connection with the Washington lawsuit  
24 that Mr. Malcolm negotiated both settlement agreements with  
25 Plaintiff's counsel at arm's length and Mr. Malcolm

1 represented Mr. Miguel's best interest based on the facts  
2 and circumstances of the matter at hand and that any  
3 suggestion that his client was harassed or forced into  
4 signing either settlement agreement is simply unfounded.  
5 See declaration of Sean B. McDowell (sic), paragraphs 2 and  
6 6, ECF number 10681-2.

7 Likewise, Mr. Miguel submitted a declaration in  
8 which he stated that he signed the second settlement  
9 agreement freely, voluntarily on advice of counsel. See  
10 declaration of Edwin G. Miguel, paragraph 4, ECF number  
11 10681-3.

12 Mr. Miguel specifically stated that he didn't  
13 enter into the agreement as a result of coercion or  
14 harassment but determined upon the advice of counsel that  
15 settling the matter "would help me protect my personal  
16 assets and avoid bankruptcy, and was therefore in  
17 my best interests". See paragraph 5 of his declaration.

18 Mr. Miguel also stated that settlement agreements  
19 were not based upon the default judgment. See Id.

20 To the extent any issue with Mr. Miguel's  
21 representation by counsel goes to the validity of the second  
22 settlement agreement itself such as used are more  
23 appropriately directed to the Washington state court. And  
24 so this court is not taking any views except to the extent  
25 that I'm rejecting the notions that this was a result of

1 coercion as had been suggested by Chubb.

2           Additionally, to the extent that Chubb suggested  
3 the second settlement agreement should be void due to the  
4 improper leverage on the part of the plaintiff, any  
5 reasonableness inquiry with respect to Mr. Miguel's entry  
6 into the second settlement is something for the Washington  
7 state court to consider in the first instance as between  
8 these two nondebtor parties. And the same is true of any  
9 rights that the insurance company may have in state court.

10           Chubb also makes a tracing argument suggesting the  
11 second settlement agreement, the settlement order and the  
12 confession of judgment are tainted by the default judgment  
13 and first settlement agreement and therefore must be  
14 declared void despite the fact that the automatic stay was  
15 lifted with respect to Mr. Miguel at the time these were all  
16 actually executed.

17           But the cases relied on by Chubb can be easily  
18 distinguished. First, the cases cited by Chubb do not  
19 involve settlements or orders that were entered into after  
20 relief from the automatic stay was granted by the bankruptcy  
21 court. Second, the cases cited by Chubb involve situations  
22 where a debtor's assets were directly impacted by the  
23 activity in question unlike the situation in this case.  
24 See, e.g., Valencia v. Rodriguez, 235 Fed. App'x. 383 (9th  
25 Cir. 2017) (sic), which involved a bankruptcy court voiding

1 an unapproved settlement entered into while the automatic  
2 stay was in effect. See also *In re Extraction Oil & Gas,*  
3 *Inc.*, 2020 WL 7074142 (Bankr. D. Del. Dec. 3, 2020) which  
4 held that a temporary restraining order and settlement  
5 agreement entered into with a third party during the  
6 pendency of the debtor's cases violate the automatic stay  
7 because they interfered with an existing business  
8 relationship with the debtors and were therefore exercising  
9 control over estate property. See *In re Nalley*, 507 B.R.  
10 411 at 419 (Bankr. S.D. Ga. 2014) which held that provisions  
11 in divorce decrees entered into between the joint  
12 debtor/husband and wife during the pendency of the  
13 bankruptcy case is void because it constituted diversion of  
14 property of the bankruptcy estate in violation of the  
15 automatic stay. See also *Sasson v. Sokoloff*, 424 F.3d 864  
16 (9th Cir. 2005) holding that the bankruptcy court had  
17 subject matter jurisdiction to enter a money judgment in a  
18 nondischargeability action where the underlying debt had  
19 been reduced to judgment in state court. See *In re Ehmke*,  
20 2006 WL 1994904 (E.D.N.Y. July 14, 2006) holding that the  
21 bankruptcy court could grant the motion to reject a contract  
22 under Section 365 of the Bankruptcy Code without  
23 contravening the *Rooker-Feldman* doctrine.

24 The Court was unable to locate case law directly  
25 supporting Chubb's tracing argument and indeed counsel to



1 Chubb admitted they were unable to locate any such cases.

2 See hearing transcript in this case of November 3rd, 2022 at  
3 page 40, lines 7 through 13, ECF number 10716.

4 So for all these reasons, the Court finds that the  
5 default judgment and first settlement agreement were entered  
6 in violation of the automatic stay and therefore are void ab  
7 initio. But for the second settlement agreement, the  
8 settlement order and the confession of judgment, those were  
9 entered subsequent to the stay being lifted against Mr.  
10 Miguel and do not implicate the asses of the debtors or  
11 debtors' estates or certainly what parties argued.  
12 Therefore, they do not implicate the automatic stay and  
13 there's nothing about the automatic stay that would render  
14 them void ab initio.

15 So that's the Court's ruling. Of course, I will  
16 end with one note that I don't want the Court's ruling as to  
17 the matters that are considered to be not void ab initio to  
18 be in any way an endorsement of the actions here which I  
19 find to be awfully close to the line and certainly not the  
20 way that these things should proceed. I think there was a  
21 lot of clever lawyering here to steer clear of things and  
22 fix things after the fact. The bottom line is, though,  
23 given the declarations that I have of Mr. Miguel and his  
24 counsel and given that those documents were executed after  
25 the stay was lifted unnoticed to Chubb and everyone else,

1 that the liquidating trustee and the debtors have not  
2 weighed in, I reached the conclusion that I did. But if you  
3 tweak a small fact or two here or there in this fact  
4 pattern, I would reach very strikingly a different  
5 conclusion.

6 And so, I, again, will leave to the state court in  
7 Washington to assess all the parties' rights. The only  
8 thing I'm addressing is whether these action were void ab  
9 initio in light of the automatic stay. So it's not to be  
10 read as an endorsement of any party's position or not in  
11 connection with other issues that might properly come before  
12 the Washington state court.

13 And finally, I have concluded that several actions  
14 were void ab initio and those are clear.

15 So given all that, I'll ask that prevailing --  
16 counsel to the prevailing party should settle an order on  
17 five days notice and that proposed order should be  
18 consistent with my usual practice submitted on the docket by  
19 filing a notice of proposed order on the case management  
20 electronic case filing docket with a copy of the proposed  
21 order attached as an exhibit to the notice. And a copy of  
22 the notice and proposed order should be served on opposing  
23 counsel.

24 So that's the Court's ruling. And let me ask if  
25 there's anything else that we need to address here this

1 morning before adjourning.

2 Just in the interest of clarity, I'll just circle  
3 the virtual room. Mr. Fail, anything else from the  
4 liquidating trustee?

5 MR. FAIL: No. Thank you very much for your time,  
6 Your Honor. Appreciate it.

7 THE COURT: All right. Anything else from Chubb?

8 MS. HEITZENRATER: No. Thank you very much, Your  
9 Honor.

10 THE COURT: All right. Anything else from the  
11 plaintiffs in the Washington state court action?

12 MR. YOUNGBLUT: No, Your Honor. Thank you.

13 THE COURT: All right. I certainly would  
14 encourage folks who when they run into bankruptcy cases when  
15 they're pursuing these kind of personal injury cases, they  
16 need to talk to somebody who knows something about  
17 bankruptcy because the next one of these will not go so  
18 well. And it's really not the way to go. So more than that  
19 I will not say.

20 And with that, I wish you all a pleasant day, good  
21 afternoon. Be well.

22 MR. FAIL: Thank you.

23 MS. HEITZENRATER: Thank you, Your Honor.

24 (Whereupon, these proceedings were concluded at 11:48 a.m.)  
25

I N D E X

R U L I N G S

DESCRIPTION

PAGE

LINE

Motion of the Chubb Companies for entry of  
order ruling that default judgment,  
settlement agreements and state court  
orders are void ab initio granted in part  
and denied in part

14

22

Default judgment and first settlement

33

5

agreement were entered in violation of  
automatic stay and therefore are void  
ab initio

Second settlement agreement, settlement

33

7

order and confession of judgment were  
entered subsequent to stay being lifted  
against Mr. Miguel and therefore, are  
not rendered void ab initio

C E R T I F I C A T I O N

I, Lisa Beck, certify that the foregoing transcript is a  
proceedings.



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Lisa Beck

Date: March 30, 2023

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